

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ENERGY INTELLIGENCE GROUP, INC.
and ENERGY INTELLIGENCE GROUP
(UK) LIMITED,

Plaintiffs,

v.

LAZARD FRÈRES & CO. LLC,

Defendant.

Civil Action No. 18-cv-2241 (VDG)

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiffs Energy Intelligence Group, Inc. (“EIG”) and Energy Intelligence Group (UK) Limited (“EIG UK”) (collectively, “Plaintiffs”), by and through their undersigned counsel, allege the following as and for their second amended complaint against Defendant, Lazard Frères & Co. LLC (“Defendant”):

INTRODUCTION

1. Plaintiffs bring this action against Defendant under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* (the “Copyright Act”) for, among other things, willful infringement of Plaintiffs’ registered copyrights.

THE PARTIES

2. Plaintiff EIG is a Delaware corporation with its principal place of business located at 270 Madison Avenue, Suite 302, New York, New York 10016.

3. Plaintiff EIG UK is a United Kingdom limited company with its principal place of business located at Interpark House, 7 Down Street, London, W1J 7AJ United Kingdom.

4. Upon information and belief, Defendant Lazard Freres & Co. LLC is a New York limited liability company with offices around the United States and the world, including an office located at 600 Travis Street, Suite 2300, Houston, TX 77002.

JURISDICTION AND VENUE

5. This Court has jurisdiction over causes of action alleging copyright infringement pursuant to Sections 501, *et seq.* of the Copyright Act. Additionally, the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331 because the federal courts are vested with exclusive jurisdiction in copyright cases. 28 U.S.C. § 1338(a).

6. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant is present and doing business in this District, and the acts of copyright infringement alleged herein took place in this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

FACTUAL BACKGROUND

A. Plaintiffs' Publications

8. Plaintiffs, and their predecessors-in-interest, have been engaged in publishing newsletters and other publications for the highly-specialized global energy industry for over sixty-five (65) years. In particular, Plaintiffs and their predecessors-in-interest have published the daily newsletter *Oil Daily* (“OD”) since at least as early as 1951. A representative copy of the June 7, 2018 issue of OD is attached hereto as Exhibit A (the “June 7, 2018 OD Copyrighted Work”).

9. Plaintiff EIG and its predecessors-in-interest have published the weekly newsletter *Natural Gas Week* (“NGW”) since at least as early as 1984. A representative copy of the March 19, 2012 issue of NGW is attached hereto as Exhibit B (the “March 19, 2012 NGW Copyrighted Work”).

10. The audience for Plaintiffs' publications, including OD and NGW, consists of individuals with an interest in the oil and gas industries, including securities brokers and dealers, consultants, bankers, investors, stock market analysts, traders, commodity analysts, and others who follow or work in these industries or sell goods and services to those in or following these industries.

11. Plaintiffs' focus is on providing original, high-quality articles and analysis relating to the oil and gas industries through OD, NGW, and their other publications. Plaintiffs have invested significant time and resources to create its publications, including OD and NGW.

12. Plaintiffs' publications do not feature or have any advertisements or sponsors in order to ensure journalistic integrity and objective reporting. Plaintiffs are, therefore, dependent on paid subscriptions to sustain the viability of their publications.

13. Plaintiffs maintain an experienced and knowledgeable editorial staff of approximately sixty (60) reporters, editors, and analysts at seven (7) editorial bureaus located in New York, Washington, D.C., Houston, London, Moscow, Dubai, and Singapore.

14. The copyrighted, original content and analysis created by Plaintiffs included in its publications are valuable copyrighted works and publication assets of Plaintiffs. In addition to OD, Plaintiffs also publish other original publications, including, but not limited to:

- EI Finance;
- EI New Energy;
- EI New Energy Data Source;
- Energy Compass;
- Energy Intelligence Briefing;
- International Oil Daily;
- Jet Fuel Intelligence;
- LNG Intelligence;
- Natural Gas Week Data Source;
- NGW's Gas Market Reconnaissance;
- Nefte Compass;
- Nefte Compass Data Source;
- Nuclear Intelligence Weekly;
- Oil Market Intelligence;

Oil Market Intelligence Data Source;
Petroleum Intelligence Weekly;
Petroleum Intelligence Weekly Data Source;
World Gas Intelligence; and
World Gas Intelligence Data Source.

15. Plaintiffs have developed an exemplary reputation for their high journalistic standards and the reliability of the content of all their publications, including OD and NGW.

16. In order for third parties to regularly benefit from Plaintiffs' analytical and creative content contained in OD, NGW, and Plaintiffs' other publications, Plaintiffs offer various subscriptions to interested parties to access the valuable content contained therein.

17. Interested parties have various subscription options depending on their respective needs. Subscribers typically obtain OD, NGW, and Plaintiffs' other publications by email and/or from Plaintiffs' website, which permits password-protected access to current and/or archived issues, pursuant to a subscription or license agreement. Plaintiffs' website also provides the individual articles in Plaintiffs' publications separately from the publication.

18. Interested parties that do not maintain a subscription or license agreement may also purchase individual articles appearing in OD, NGW, and Plaintiffs' other publications, as well as archived articles, by using Plaintiffs' pay-per-article service. The license fee per article, per copy, is \$9.00 for articles appearing in OD and \$24.00 for articles appearing in NGW. The total license fee for this pay-per-article service is multiplied by the number of copies of the requested article to calculate the total licensing fee.

19. Interested parties that do not maintain a subscription or license agreement may also purchase individual issues of Plaintiffs' publications including OD, and NGW, as well as archived issues, from Plaintiffs using Plaintiffs' pay-per-issue service. The license fee per issue, per copy, is \$95.00 for OD and \$395.00 for NGW. The total license fee for this pay-per-issue

service is multiplied by the number of copies of the requested issue to calculate the total licensing fee.

B. Plaintiffs' Publications' Copyright Notices

20. Plaintiffs have complied with the laws pertinent to providing notice of Plaintiffs' copyrights in, and to, OD, NGW, and its other publications. Specifically, Plaintiffs provide copyright notices and warnings on their website, e-mails, articles and publications, including OD and NGW, so that third parties are aware of Plaintiffs' rights in their publications and works of original authorship (the "Copyright Notice and Warnings"). As a representative example, the Copyright Notice and Warnings contained in the e-mail transmitting the June 7, 2018 OD Copyrighted Work state:

Copyright © 2018 Energy Intelligence Group, Inc. All rights reserved.

Reproduction or distribution internally or externally in any manner (photostatically, electronically, or via facsimile), including by sharing printed copies, or forwarding or posting on local- and wide-area networks and intranets, or sharing user name and password, is strictly prohibited without appropriate license from Energy Intelligence. Contact customerservice@energyintel.com for more information.

(Exhibit C).

21. As an additional representative example, the Copyright Notice and Warnings on the front cover of the June 7, 2018 OD Copyrighted Work specifically state: "Copyright © 2018 Energy Intelligence Group. All rights reserved. Unauthorized access or electronic forwarding, even for internal use, is prohibited." (Exhibit A at 1).

22. As a further representative example, Plaintiffs also use the following Copyright Notice and Warnings in OD:

Copyright © 2018 by Energy Intelligence Group, Inc. [. . .] All rights reserved. Access, distribution and reproduction are subject to the terms and conditions of the subscription agreement and/or license with Energy Intelligence. Access, distribution, reproduction or electronic forwarding not

specifically defined and authorized in a valid subscription agreement or license with Energy Intelligence is willful copyright infringement. Additional copies of individual articles may be obtained using the pay-per-article feature offered at www.energyintel.com.

(Exhibit A at 13).

23. NGW and the emails delivering NGW contain the same or substantially similar copyright notices as those for OD. Examples of the copyright notices for NGW are attached hereto as Exhibit B at 1, 15.

24. Based on these representative examples of the Copyright Notice and Warnings, Plaintiffs are in compliance with the copyright notice requirements set forth in the Copyright Act, 17 U.S.C. § 401.

25. Accordingly, Defendant knew or should have known that the June 7, 2018 OD Copyrighted Work and all other issues of OD received by Defendant and the articles contained therein (hereinafter collectively referred to as the “OD Copyrighted Works”), and the March 19, 2012 NGW Copyrighted Work and all other issues of NGW received by Defendant and the articles contained therein (hereinafter collectively referred to as the “NGW Copyrighted Works”) are protected by U.S. copyright laws (the OD Copyrighted Works and the NGW Copyrighted Works are hereinafter collectively referred to as the “OD and NGW Copyrighted Works”).

26. The copyright notices appearing conspicuously on multiple materials received by Defendant, including the OD and NGW Copyrighted Works, demonstrates actual notice of Plaintiffs’ copyrights in the OD and NGW Copyrighted Works and works of original authorship in all issues of the OD and NGW Copyrighted Works received by Defendant and the articles contained therein, all of which are protected by U.S. copyright laws.

27. At the very least, Defendant had constructive knowledge of Plaintiffs' copyrights in OD and NGW based on receiving the OD and NGW Copyrighted Works containing the copyright notices prominently displayed in each of the OD and NGW Copyrighted Works.

28. Having complied with the copyright notice requirements set forth in the Copyright Act, 17 U.S.C. § 401, Plaintiffs have provided Defendant with complete and proper notice of Plaintiffs' copyrights in the OD and NGW Copyrighted Works.

29. Plaintiffs are the exclusive copyright owners in, and to, numerous original works of authorship including, without limitation, the issues of the OD and NGW Copyrighted Works and the articles contained therein and independently available.

C. Plaintiffs' OD Copyrights

30. Among other copyright registrations, Plaintiffs are the owners of the following U.S. Copyright Registrations for the OD Copyrighted Works, attached hereto as Exhibit D:

- No. TX 6-665-575 for Edition 58 covering 21 collective works and the articles contained therein published in August 2008;
- No. TX 6-680-142 for Edition 58 covering 21 collective works and the articles contained therein published in September 2008;
- No. TX 6-662-749 for Edition 58 covering 23 collective works and the articles contained therein published in October 2008;
- No. TX 6-664-308 for Edition 58 covering 18 collective works and the articles contained therein published in November 2008;
- No. TX 6-664-309 for Edition 58 covering 22 collective works and the articles contained therein published in December 2008;
- No. TX 6-647-241 for Edition 59 covering 20 collective works and the articles contained therein published in January 2009;
- No. TX 6-631-529 for Edition 59 covering 19 collective works and the articles contained therein published in February 2009;
- No. TX 6-647-244 for Edition 59 covering 22 collective works and the articles contained therein published in March 2009;
- No. TX 6-665-630 for Edition 59 covering 21 collective works and the articles contained therein published in April 2009;
- No. TX 6-631-518 for Edition 59 covering 20 collective works and the articles contained therein published in May 2009;
- No. TX 6-631-525 for Edition 59 covering 22 collective works and the articles contained therein published in June 2009;

- No. TX 6-685-271 for Edition 59 covering 22 collective works and the articles contained therein published in July 2009;
- No. TX 6-684-118 for Edition 59 covering 21 collective works and the articles contained therein published in August 2009;
- No. TX 6-701-938 for Edition 59 covering 21 collective works and the articles contained therein published in September 2009;
- No. TX 6-701-939 for Edition 59 covering 22 collective works and the articles contained therein published in October 2009;
- No. TX 6-702-127 for Edition 59 covering 21 collective works and the articles contained therein published in November 2009;
- No. TX 6-702-124 for Edition 59 covering 22 collective works and the articles contained therein published in December 2009;
- No. TX 6-701-924 for Edition 60 covering 20 collective works and the articles contained therein published in January 2010;
- No. TX 6-701-927 for Edition 60 covering 20 collective works and the articles contained therein published in February 2010;
- No. TX 6-703-824 for Edition 60 covering 23 collective works and the articles contained therein published in March 2010;
- No. TX 6-703-826 for Edition 60 covering 21 collective works and the articles contained therein published in April 2010;
- No. TX 6-704-578 for Edition 60 covering 20 collective works and the articles contained therein published in May 2010;
- No. TX 6-704-734 for Edition 60 covering 22 collective works and the articles contained therein published in June 2010;
- No. TX 6-705-213 for Edition 60 covering 22 collective works and the articles contained therein published in July 2010;
- No. TX 6-770-133 for Edition 60 covering 22 collective works and the articles contained therein published in August 2010;
- No. TX 6-770-132 for Edition 60 covering 22 collective works and the articles contained therein published in September 2010;
- No. TX 6-772-066 for Edition 60 covering 21 collective works and the articles contained therein published in October 2010;
- No. TX 6-779-215 for Edition 60 covering 22 collective works and the articles contained therein published in November 2010;
- No. TX 6-778-772 for Edition 60 covering 21 collective works and the articles contained therein published in December 2010;
- No. TX 6-776-062 for Edition 61 covering 21 collective works and the articles contained therein published in January 2011;
- No. TX 6-776-069 for Edition 61 covering 20 collective works and the articles contained therein published in February 2011;
- No. TX 6-779-252 for Edition 61 covering 23 collective works and the articles contained therein published in March 2011;
- No. TX 6-779-251 for Edition 61 covering 20 collective works and the articles contained therein published in April 2011;
- No. TX 6-779-316 for Edition 61 covering 21 collective works and the articles contained therein published in May 2011;

- No. TX 6-776-025 for Edition 61 covering 22 collective works and the articles contained therein published in June 2011;
- No. TX 6-782-122 for Edition 61 covering 21 collective works and the articles contained therein published in July 2011;
- No. TX 6-774-709 for Edition 61 covering 23 collective works and the articles contained therein published in August 2011;
- No. TX 6-780-004 for Edition 61 covering 22 collective works and the articles contained therein published in September 2011;
- No. TX 6-780-005 for Edition 61 covering 21 collective works and the articles contained therein published in October 2011;
- No. TX 6-782-123 for Edition 61 covering 22 collective works and the articles contained therein published in November 2011;
- No. TX 6-782-124 for Edition 61 covering 12 collective works and the articles contained therein published in December 2011;
- No. TX 6-789-069 for Edition 61 covering 9 collective works and the articles contained therein published in December 2011;
- No. TX 6-774-708 for Edition 62 covering 21 collective works and the articles contained therein published in January 2012;
- No. TX 6-786-171 for Edition 62 covering 21 collective works and the articles contained therein published in February 2012;
- No. TX 6-787-504 for Edition 62 covering 22 collective works and the articles contained therein published in March 2012;
- No. TX 6-787-503 for Edition 62 covering 20 collective works and the articles contained therein published in April 2012;
- No. TX 6-788-123 for Edition 62 covering 23 collective works and the articles contained therein published in May 2012;
- No. TX 6-788-122 for Edition 62 covering 21 collective works and the articles contained therein published in June 2012;
- No. TX 6-789-191 for Edition 62 covering 22 collective works and the articles contained therein published in July 2012;
- No. TX 6-790-253 for Edition 62 covering 23 collective works and the articles contained therein published in August 2012;
- No. TX 6-790-252 for Edition 62 covering 20 collective works and the articles contained therein published in September 2012;
- No. TX 6-790-254 for Edition 62 covering 22 collective works and the articles contained therein published in October 2012;
- No. TX 6-790-255 for Edition 62 covering 22 collective works and the articles contained therein published in November 2012;
- No. TX 7-676-538 for Edition 62 covering 20 collective works and the articles contained therein published in December 2012;
- No. TX 7-676-528 for Edition 63 covering 22 collective works and the articles contained therein published in January 2013
- No. TX 7-744-517 for Edition 63 covering 20 collective works and the articles contained therein published in February 2013;
- No. TX 7-744-541 for Edition 63 covering 20 collective works and the articles contained therein published in March 2013;

- No. TX 7-726-260 for Edition 63 covering 22 collective works and the articles contained therein published in April 2013;
- No. TX 7-726-259 for Edition 63 covering 23 collective works and the articles contained therein published in May 2013;
- No. TX 7-726-232 for Edition 63 covering 20 collective works and the articles contained therein published in June 2013;
- No. TX 7-989-393 for Edition 63 covering 23 collective works and the articles contained therein published in July 2013;
- No. TX 7-946-126 for Edition 63 covering 22 collective works and the articles contained therein published in August 2013;
- No. TX 7-898-912 for Edition 63 covering 21 collective works and the articles contained therein published in September 2013;
- No. TX 7-991-979 for Edition 63 covering 23 collective works and the articles contained therein published in October 2013;
- No. TX 9-068-878 for Edition 63 covering 21 collective works and the articles contained therein published in November 2013;
- No. TX 8-058-300 for Edition 63 covering 21 collective works and the articles contained therein published in December 2013;
- No. TX 7-962-816 for Edition 64 covering 22 collective works and the articles contained therein published in January 2014;
- No. TX 7-990-336 for Edition 64 covering 20 collective works and the articles contained therein published in February 2014;
- No. TX 7-993-575 for Edition 64 covering 21 collective works and the articles contained therein published in March 2014;
- No. TX 7-934-103 for Edition 64 covering 21 collective works and the articles contained therein published in April 2014;
- No. TX 7-966-215 for Edition 64 covering 21 collective works and the articles contained therein published in May 2014;
- No. TX 7-982-542 for Edition 64 covering 21 collective works and the articles contained therein published in June 2014;
- No. TX 8-050-420 for Edition 64 covering 23 collective works and the articles contained therein published in July 2014;
- No. TX 8-086-895 for Edition 64 covering 21 collective works and the articles contained therein published in August 2014;
- No. TX 8-029-377 for Edition 64 covering 22 collective works and the articles contained therein published in September 2014;
- No. TX 8-110-455 for Edition 64 covering 23 collective works and the articles contained therein published in October 2014;
- No. TX 8-060-210 for Edition 64 covering 20 collective works and the articles contained therein published in November 2014;
- No. TX 8-109-803 for Edition 64 covering 22 collective works and the articles contained therein published in December 2014;
- No. TX 8-051-089 for Edition 65 covering 21 collective works and the articles contained therein published in January 2015;
- No. TX 8-178-073 for Edition 65 covering 21 collective works and the articles contained therein published in February 2015;

- No. TX 8-178-063 for Edition 65 covering 23 collective works and the articles contained therein published in March 2015;
- No. TX 8-149-237 for Edition 65 covering 21 collective works and the articles contained therein published in April 2015;
- No. TX 8-180-407 for Edition 64 covering 20 collective works and the articles contained therein published in May 2015;
- No. TX 8-205-565 for Edition 65 covering 22 collective works and the articles contained therein published in June 2015;
- No. TX 8-205-582 for Edition 65 covering 23 collective works and the articles contained therein published in July 2015;
- No. TX 8-236-144 for Edition 65 covering 21 collective works and the articles contained therein published in August 2015;
- No. TX 8-235-733 for Edition 65 covering 22 collective works and the articles contained therein published in September 2015;
- No. TX 8-256-329 for Edition 65 covering 23 collective works and the articles contained therein published in October 2015;
- No. TX 8-479-656 for Edition 65 covering 21 collective works and the articles contained therein published in November 2015;
- No. TX 8-258-814 for Edition 65 covering 22 collective works and the articles contained therein published in December 2015;
- No. TX 8-262-868 for Edition 66 covering 20 collective works and the articles contained therein published in January 2016;
- No. TX 8-263-911 for Edition 66 covering 21 collective works and the articles contained therein published in February 2016;
- No. TX 8-274-102 for Edition 66 covering 22 collective works and the articles contained therein published in March 2016;
- No. TX 8-323-668 for Edition 66 covering 21 collective works and the articles contained therein published in April 2016;
- No. TX 8-412-812 for Edition 66 covering 21 collective works and the articles contained therein published in May 2016;
- No. TX 8-285-267 for Edition 66 covering 22 collective works and the articles contained therein published in June 2016;
- No. TX 9-330-442 for Edition 66 covering 21 collective works and the articles contained therein published in July 2016;
- No. TX 8-315-318 for Edition 66 covering 23 collective works and the articles contained therein published in August 2016;
- No. TX 8-334-804 for Edition 66 covering 22 collective works and the articles contained therein published in September 2016;
- No. TX 8-397-635 for Edition 66 covering 21 collective works and the articles contained therein published in October 2016;
- No. TX 8-397-583 for Edition 66 covering 22 collective works and the articles contained therein published in November 2016;
- No. TX 8-397-541 for Edition 66 covering 21 collective works and the articles contained therein published in December 2016;
- No. TX 8-360-266 for Edition 67 covering 21 collective works and the articles contained therein published in January 2017;

- No. TX 8-380-664 for Edition 67 covering 20 collective works and the articles contained therein published in February 2017;
- No. TX 8-440-678 for Edition 67 covering 23 collective works and the articles contained therein published in March 2017;
- No. TX 8-481-672 for Edition 67 covering 19 collective works and the articles contained therein published in April 2017;
- No. TX 8-483-753 for Edition 67 covering 22 collective works and the articles contained therein published in May 2017;
- No. TX 8-432-555 for Edition 67 covering 22 collective works and the articles contained therein published in June 2017;
- No. TX 8-481-877 for Edition 67 covering 21 collective works and the articles contained therein published in July 2017;
- No. TX 8-482-019 for Edition 67 covering 23 collective works and the articles contained therein published in August 2017;
- No. TX 8-482-009 for Edition 67 covering 21 collective works and the articles contained therein published in September 2017;
- No. TX 8-500-612 for Edition 67 covering 22 collective works and the articles contained therein published in October 2017;
- No. TX 8-532-290 for Edition 67 covering 22 collective works and the articles contained therein published in November 2017;
- No. TX 8-705-551 for Edition 67 covering 20 collective works and the articles contained therein published in December 2017;
- No. TX 8-686-686 for Edition 68 covering 22 collective works and the articles contained therein published in January 2018;
- No. TX 8-686-594 for Edition 68 covering 20 collective works and the articles contained therein published in February 2018;
- No. TX 8-686-782 for Edition 68 covering 21 collective works and the articles contained therein published in March 2018;
- No. TX 8-686-656 for Edition 68 covering 21 collective works and the articles contained therein published in April 2018;
- No. TX 8-587-433 for Edition 68 covering 22 collective works and the articles contained therein published in May 2018; and
- No. TX 8-722-859 for Edition 68 covering 21 collective works and the articles contained therein published in June 2018.

D. Plaintiff EIG's NGW Copyrights

31. Among other copyright registrations, Plaintiff EIG is the owner of the following U.S.

Copyright Registrations for the NGW Copyrighted Works, attached hereto as Exhibit E:

- No. TX 6-679-301 for Edition 24 covering 4 collective works and the articles contained therein published in August 2008;
- No. TX 6-678-883 for Edition 24 covering 5 collective works and the articles contained therein published in September 2008;

- No. TX 6-682-028 for Edition 24 covering 4 collective works and the articles contained therein published in October 2008;
- No. TX 6-682-711 for Edition 24 covering 4 collective works and the articles contained therein published in November 2008;
- No. TX 6-682-712 for Edition 24 covering 5 collective works and the articles contained therein published in December 2008;
- No. TX 6-684-566 for Edition 25 covering 4 collective works and the articles contained therein published in January 2009;
- No. TX 6-769-898 for Edition 25 covering 4 collective works and the articles contained therein published in February 2009;
- No. TX 6-688-108 for Edition 25 covering 5 collective works and the articles contained therein published in March 2009;
- No. TX 6-688-109 for Edition 25 covering 4 collective works and the articles contained therein published in April 2009;
- No. TX 6-701-336 for Edition 25 covering 4 collective works and the articles contained therein published in May 2009;
- No. TX 6-701-326 for Edition 25 covering 5 collective works and the articles contained therein published in June 2009;
- No. TX 6-684-720 for Edition 25 covering 4 collective works and the articles contained therein published in July 2009;
- No. TX 6-684-728 for Edition 25 covering 5 collective works and the articles contained therein published in August 2009;
- No. TX 6-769-308 for Edition 25 covering 4 collective works and the articles contained therein published in September 2009;
- No. TX 6-769-307 for Edition 25 covering 4 collective works and the articles contained therein published in October 2009;
- No. TX 6-778-050 for Edition 25 covering 5 collective works and the articles contained therein published in November 2009;
- No. TX 6-778-038 for Edition 25 covering 4 collective works and the articles contained therein published in December 2009;
- No. TX 6-716-600 for Edition 26 covering 4 collective works and the articles contained therein published in January 2010;
- No. TX 6-716-590 for Edition 26 covering 4 collective works and the articles contained therein published in February 2010;
- No. TX 6-781-009 for Edition 26 covering 5 collective works and the articles contained therein published in March 2010;
- No. TX 6-776-728 for Edition 26 covering 4 collective works and the articles contained therein published in April 2010;
- No. TX 6-716-400 for Edition 26 covering 5 collective works and the articles contained therein published in May 2010;
- No. TX 6-608-141 for Edition 26 covering 4 collective works and the articles contained therein published in June 2010;
- No. TX 6-778-526 for Edition 26 covering 4 collective works and the articles contained therein published in July 2010;
- No. TX 6-716-398 for Edition 26 covering 5 collective works and the articles contained therein published in August 2010;

- No. TX 6-777-324 for Edition 26 covering 4 collective works and the articles contained therein published in September 2010;
- No. TX 6-718-335 for Edition 26 covering 4 collective works and the articles contained therein published in October 2010;
- No. TX 6-782-086 for Edition 26 covering 5 collective works and the articles contained therein published in November 2010;
- No. TX 6-782-088 for Edition 26 covering 4 collective works and the articles contained therein published in December 2010;
- No. TX 6-782-087 for Edition 27 covering 5 collective works and the articles contained therein published in January 2011;
- No. TX 6-782-084 for Edition 27 covering 4 collective works and the articles contained therein published in February 2011;
- No. TX 6-781-709 for Edition 27 covering 4 collective works and the articles contained therein published in March 2011;
- No. TX 6-781-708 for Edition 27 covering 4 collective works and the articles contained therein published in April 2011;
- No. TX 6-782-085 for Edition 27 covering 5 collective works and the articles contained therein published in May 2011;
- No. TX 6-782-083 for Edition 27 covering 4 collective works and the articles contained therein published in June 2011;
- No. TX 6-782-121 for Edition 27 covering 4 collective works and the articles contained therein published in July 2011;
- No. TX 7-548-482 for Edition 27 covering 5 collective works and the articles contained therein published in August 2011;
- No. TX 7-548-479 for Edition 27 covering 4 collective works and the articles contained therein published in September 2011;
- No. TX 7-548-471 for Edition 27 covering 5 collective works and the articles contained therein published in October 2011;
- No. TX 7-548-402 for Edition 27 covering 4 collective works and the articles contained therein published in November 2011;
- No. TX 7-548-383 for Edition 27 covering 4 collective works and the articles contained therein published in December 2011;
- No. TX 7-548-409 for Edition 28 covering 5 collective works and the articles contained therein published in January 2012;
- No. TX 7-548-677 for Edition 28 covering 4 collective works and the articles contained therein published in February 2012;
- No. TX 7-548-678 for Edition 28 covering 4 collective works and the articles contained therein published in March 2012;
- No. TX 7-548-675 for Edition 28 covering 5 collective works and the articles contained therein published in April 2012;
- No. TX 7-548-457 for Edition 28 covering 4 collective works and the articles contained therein published in May 2012;
- No. TX 7-547-966 for Edition 28 covering 4 collective works and the articles contained therein published in June 2012;
- No. TX 7-547-965 for Edition 28 covering 3 collective works and the articles contained therein published in July 2012;

- No. TX 7-644-057 for Edition 28 covering 2 collective works and the articles contained therein published in July 2012;
- No. TX 7-615-848 for Edition 28 covering 4 collective works and the articles contained therein published in August 2012; and
- No. TX 7-614-509 for Edition 28 covering 4 collective works and the articles contained therein published in September 2012.

E. Plaintiffs' Copyright Management Information

32. Each of the OD Copyrighted Works and NGW Copyrighted Works contain copyright management information as defined by 17 U.S.C. § 1202(c). This copyright management information is present in both electronic and physical copies of each of Plaintiffs' OD and NGW Copyrighted Works and the email correspondence delivering the OD and NGW Copyrighted Works.
33. Copyright management information setting forth, inter alia, information set forth on a notice of copyright, the copyright owner(s) of the OD and NGW works, the author(s) of the OD and NGW works, the year of the copyright, and excerpts of the terms and conditions for use of the work are conveyed in emails delivering OD and NGW to Defendant.
34. EIG includes copyright management information the cover emails delivering its publications so all recipients will know the works are protected by copyright and owned by EIG, and be aware of the restrictions regarding the distribution of copies of the works.
35. By way of example, Exhibit C displays the following copyright management information in the body of the email transmitting OD to Defendant.

Copyright © Energy Intelligence Group, Inc. All rights reserved.

Reproduction or distribution internally or externally in any manner (photostatically, electronically, or via facsimile), including by sharing printed copies, or forwarding or posting on local- and wide-area networks and intranets, or sharing user name and password, is strictly prohibited without appropriate license from Energy Intelligence. Contact customerservice@energyintel.com for more information.

(Exhibit C).

F. Defendant's OD and NGW Subscription History

36. From at least as early as August 2008 through to the present Defendant has maintained a subscription for a single copy of OD and the articles therein.

37. From at least as early as August 2008 through September 2012 Defendant maintained a subscription for a single copy of NGW and the articles therein.

38. Defendant first purchased a subscription for a single copy of OD with email delivery and a subscription for a single copy of NGW with email delivery on or about August 4, 2008.

Defendant elected to have its single copy of OD and its single copy of NGW delivered to John Rutherford.

39. On or about October 1, 2010, Defendant designated Robert Lynd as the person to receive Defendant's single copy of OD and its single copy of NGW under Defendant's subscriptions.

40. On or about October 14, 2010, Defendant designated Kayla Anderson as the person to receive Defendant's single copy of OD and its single copy of NGW under Defendant's subscriptions.

41. On or about August 1, 2011, Defendant designated Rebecca Threadgill as the person to receive Defendant's single copy of OD and its single copy of NGW under Defendant's subscriptions.

42. On or about September 28, 2012, Defendant did not renew its subscription to NGW and the subscription expired. Defendant renewed its subscription to and continued to receive OD, and Rebecca Threadgill remained the person designated by Defendant to receive Defendant's single copy of OD.

43. On March 26, 2014, Defendant designated Kristy Armstrong as the person to receive the Defendant's single copy of OD under Defendant's subscription.

44. Defendant renewed its subscription for a single copy of OD every year since 2008.

45. Defendant renewed its subscription for a single copy of NGW every year from 2008 through 2012.

46. Plaintiffs' subscription agreements and copyright notices forbid copying, forwarding copies, and/or distributing OD and NGW without express written permission from Plaintiffs.

G. Defendant's Infringement of Plaintiffs' OD Copyrighted Works

47. Analysis of data from the email delivery system used by Plaintiffs to deliver OD to the Defendant indicates that the email delivering OD to Defendant was opened multiple times each day, and, upon information and belief, Defendant has been copying and distributing OD to multiple other employees of Defendant.

48. Upon information and belief, the email with the June 7, 2018 OD Copyrighted Work was opened approximately 99 times that day by the Defendant, creating copies of OD and demonstrating that Defendant distributed copies of the June 7, 2018 OD Copyrighted Work to multiple employees of Defendant.

49. Upon information and belief, for the time period between May 10, 2018 and June 12, 2018, Plaintiffs published 23 issues of OD, but the 23 emails with the 23 issues of OD were opened by Defendant nearly 700 times, further demonstrating that Defendant is copying and distributing the OD Copyrighted Works to multiple employees of Defendant.

50. Upon information and belief, it has been Defendant's long-standing practice to regularly, systematically, and extensively copy and distribute OD and the articles contained therein via email to employees of Defendant.

51. Upon information and belief, the unlawful copying and distribution of OD began at least as early as August 2008, and has continued through to the present.

52. Upon information and belief, Defendant's email servers, servers, and computer systems are highly secure and only those individuals or entities that Defendant designates may access them.

53. Upon information and belief, Defendant's email servers, servers, and computer systems cannot be accessed by the general public or by Plaintiffs.

54. Upon information and belief, despite notice of the numerous Copyright Notice and Warnings against reproduction and copying and the explicit terms of the Terms and Conditions, Defendant has made copies of the OD Copyrighted Works, and the articles contained therein, and forwarded or otherwise distributed the same, all in violation of Plaintiffs' copyrights in the OD Copyrighted Works.

55. Plaintiffs have never authorized Defendant to copy, transmit, or distribute the OD Copyrighted Works.

56. Upon information and belief, Defendant actively and willfully infringed Plaintiffs' registered copyrighted works, and concealed its regular and systematic copying and forwarding of the OD Copyrighted Works, and the articles contained therein, from Plaintiffs.

57. By unlawfully copying, transmitting and distributing the OD Copyrighted Works, Defendant has, and is, violating Plaintiffs' exclusive rights to reproduce and distribute the OD Copyrighted Works.

58. Upon information and belief, Defendant's actions of copying and distributing the OD Copyrighted Works constitute willful infringement of Plaintiffs' copyrights in the OD Copyrighted Works.

H. Defendant's Infringement of Plaintiffs' NGW Copyrighted Works

59. Based on Defendant's systematic and continuous willful infringement of Plaintiffs' OD copyrighted works for years, and because the same designated recipients at Lazard who distributed copies of OD also received NGW during the relevant time periods, upon information and belief, Defendant actively and willfully infringed Plaintiffs' registered NGW Copyrighted Works, and concealed its regular and systematic copying and distributing of the NGW Copyrighted Works, and the articles contained therein, from Plaintiffs.

60. Upon information and belief, the unlawful copying and distribution of NGW by Defendant began at least as early as August 2008 and continued through September 2012.

61. Upon information and belief, Defendant's email servers, servers, and computer systems are highly secure and only those individuals or entities that Defendant designates may access them.

62. Upon information and belief, Defendant's email servers, servers, and computer systems cannot be accessed by the general public or by Plaintiffs.

63. Upon information and belief, despite notice of the numerous Copyright Notice and Warnings against reproduction and copying and the explicit terms of the Terms and Conditions, Defendant has made copies of the NGW Copyrighted Works, and the articles contained therein, and forwarded or otherwise distributed the same, all in violation of Plaintiffs' copyrights in the NGW Copyrighted Works.

64. Plaintiffs have never authorized Defendant to copy, transmit, or distribute the NGW Copyrighted Works.

65. Upon information and belief, Defendant actively and willfully infringed Plaintiffs' registered copyrighted works, and concealed its regular and systematic copying and forwarding of the NGW Copyrighted Works, and the articles contained therein, from Plaintiffs.

66. By unlawfully copying, transmitting and distributing the NGW Copyrighted Works, Defendant has violated Plaintiffs' exclusive rights to reproduce and distribute the NGW Copyrighted Works.

67. Upon information and belief, Defendant's actions of copying and distributing the NGW Copyrighted Works constitute willful infringement of Plaintiffs' copyrights in the NGW Copyrighted Works.

I. Defendant's Removal or Alteration of Copyright Management Information

68. Upon information and belief, beginning on or about June 8, 2012, Defendant intentionally removed copyright management information from the emails delivering copies of the OD and NGW works to Defendant. Defendant then copied and distributed copies of OD and NGW without the copyright management information that was contained in those emails.

69. Upon information and belief, Defendant instructed its employees to delete the copyright management information contained in the body of the emails delivering the OD and NGW publications to Defendant when copying and distributing the publications internally. Upon information and belief, the employees followed these instructions, removing copyright management information, when making and distributing copies of the OD Copyright Works and NGW.

70. Plaintiffs did not authorize Defendant to remove or alter any copyright management information.

71. Upon information and belief, Defendant distributed copies of OD and NGW knowing that copyright management information had been removed without the authorization of Plaintiffs.

72. Upon information and belief, Defendant intentionally removed or altered Plaintiffs' copyright management information in an effort to avoid possible detection of the unauthorized copying and distribution of the OD Copyrighted Works and NGW Copyrighted Works, and to avoid liability for copyright infringement.

73. As a further example, upon information and belief, Defendant took additional steps to conceal its infringing actions from Plaintiffs by instructing its employees (1) to print a single paper copy of OD from the electronic copy delivered by Plaintiffs, (2) create an additional electronic copy by scanning the printed copy, then (3) distribute copies of the scanned version in place of the version delivered by Plaintiffs via email.

74. Upon information and belief, Defendant intentionally removed or altered Plaintiffs' copyright management information knowing or having reasonable grounds to know that it would induce, enable, facilitate, or conceal Lazard's infringement of EIG's copyrights.

COUNT ONE

(INFRINGEMENT OF THE OD COPYRIGHTED WORKS)

75. Plaintiffs repeat and reallege the allegations of Paragraphs 1–74 as though fully set forth herein.

76. The OD Copyrighted Works are highly original and contain creative expression and independent analysis. The individual works comprising the OD Copyrighted Works are original works copyrightable under 17 U.S.C. § 102(a).

77. Plaintiffs owns all right, title, and interest in and to the OD Copyrighted Works and are the owners of valid copyright registrations and/or pending applications for the OD Copyrighted Works. *See* Exhibit D.

78. As the owner of the OD Copyrighted Works, Plaintiffs have the exclusive right to (1) reproduce the OD Copyrighted Works and (2) distribute copies of the OD Copyrighted Works pursuant to Section 106 of the Copyright Act, 17 U.S.C. § 106.

79. Copies of the OD Copyrighted Works were made available to and were received by Defendant pursuant to subscription agreements for a single copy of OD, which agreements prohibit copying and distributing of the OD Copyrighted Works.

80. On information and belief, Defendant for years willfully copied and distributed the OD Copyrighted Works on a consistent and systematic basis, without Plaintiffs' authorization or consent, and concealed these activities from Plaintiffs.

81. Based on the inclusion of the Copyright Notice and Warnings contained in transmittal emails, on Plaintiffs' website and each of Plaintiffs' publications, in the language in the subscription agreements, and in the various warnings contained in Plaintiffs' publications, including the OD Copyrighted Works and the transmittal cover emails, Defendant knew and/or was on notice that the OD Copyrighted Works were and are protected by the copyright laws, and Defendant is therefore unable to assert a defense of innocent infringement. *See* 17 U.S.C. § 401(d).

82. Defendant's subscription agreements to the OD Copyrighted Works prohibit copying and distributing of the OD Copyrighted Works, including the June 7, 2018 OD Copyrighted Work.

83. Upon information and belief, Defendant willfully infringed the copyrights in the OD Copyrighted Works by acting with knowledge that its actions constituted infringement, or at least

with reckless disregard of the possibility that the conduct complained about constitutes infringement.

84. Defendant's acts violate Plaintiffs' exclusive rights under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106, as amended, and constitute willful infringement of Plaintiffs' copyrights in the OD Copyrighted Works. Defendant's copying, transmitting, and distribution of Plaintiffs' OD Copyrighted Works constitute a willful and deliberate infringement of Plaintiffs' copyrights and has caused irreparable harm and damage to Plaintiffs.

85. Plaintiffs have no adequate remedy at law.

COUNT TWO

(INFRINGEMENT OF THE NGW COPYRIGHTED WORKS)

86. Plaintiffs repeat and reallege the allegations of Paragraphs 1–85 as though fully set forth herein.

87. The NGW Copyrighted Works are highly original and contain creative expression and independent analysis. The individual works comprising the NGW Copyrighted Works are original works copyrightable under 17 U.S.C. § 102(a).

88. Plaintiff EIG owns all right, title, and interest in and to the NGW Copyrighted Works and is the owner of valid copyright registrations for the NGW Copyrighted Works. *See* Exhibit E.

89. As the owner of the NGW Copyrighted Works, Plaintiff EIG has the exclusive right to (1) reproduce the NGW Copyrighted Works and (2) distribute copies of the NGW Copyrighted Works pursuant to Section 106 of the Copyright Act, 17 U.S.C. § 106.

90. Copies of the NGW Copyrighted Works were made available to and were received by Defendant pursuant to subscription agreements for a single copy of NGW, which agreements prohibit copying and distributing of the NGW Copyrighted Works.

91. On information and belief, Defendant for years willfully copied and distributed the NGW Copyrighted Works on a consistent and systematic basis, without Plaintiff EIG's authorization or consent, and concealed these activities from Plaintiff EIG.

92. Based on the inclusion of the Copyright Notice and Warnings contained in transmittal emails, on Plaintiffs' website and each of Plaintiffs' publications, in the language in the subscription agreements, and in the various warnings contained in Plaintiffs' publications, including the NGW Copyrighted Works and the transmittal cover emails, Defendant knew and/or was on notice that the NGW Copyrighted Works were and are protected by the copyright laws, and Defendant is therefore unable to assert a defense of innocent infringement. *See* 17 U.S.C. § 401(d).

93. Defendant's subscription agreements to the NGW Copyrighted Works prohibit copying and distributing of the NGW Copyrighted Works, including the March 19, 2012 NGW Copyrighted Work.

94. Upon information and belief, Defendant willfully infringed the copyrights in the NGW Copyrighted Works by acting with knowledge that its actions constituted infringement, or at least with reckless disregard of the possibility that the conduct complained about constitutes infringement.

95. Defendant's acts violate Plaintiff EIG's exclusive rights under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106, as amended, and constitute willful infringement of Plaintiff EIG's copyrights in the NGW Copyrighted Works. Defendant's copying, transmitting, and distribution of Plaintiff EIG's NGW Copyrighted Works constitute a willful and deliberate infringement of Plaintiff EIG's copyrights and has caused irreparable harm and damage to Plaintiff EIG.

96. Plaintiff EIG has no adequate remedy at law.

COUNT THREE

**(REMOVAL OR ALTERATION OF COPYRIGHT
MANAGEMENT INFORMATION IN OD)**

97. Plaintiffs repeat and reallege the allegations of Paragraphs 1–96 as though fully set forth herein.

98. Plaintiffs were and are the exclusive holders of all right, title and interest in and to the OD Copyrighted Works, and the articles, as separate and distinct works contained therein, and are the owners of valid copyright registrations for the OD Copyrighted Works.

99. Each entire publication, and the articles contained therein, of the OD Copyrighted Works are highly original and contain creative expression and independent analysis.

100. Upon information and belief, Defendant engaged in one or more acts of intentionally removing or altering Plaintiffs' copyright management information conveyed in connection with the OD Copyrighted Works in violation of 17 U.S.C. § 1202(b).

101. Upon information and belief, Defendant intentionally removed or altered Plaintiffs' copyright management information conveyed in connection with Plaintiffs' OD Copyrighted Works without the authority of Plaintiffs and knowing, or having reasonable grounds to know that such acts would induce, enable, facilitate, or conceal copyright infringement.

102. Upon information and belief, Defendant, without the authority of Plaintiffs, distributed unauthorized copies of the OD Copyrighted Works knowing that Plaintiffs' copyright management information had been removed or altered without the authority of Plaintiffs and knowing, or having reasonable grounds to know, that such acts would induce, enable, facilitate, or conceal copyright infringement.

103. Defendant's intentional violation of the integrity of Plaintiffs' copyright management information caused irreparable harm and damage to Plaintiffs, entitling Plaintiffs to recovery of damages for such acts pursuant to 17 U.S.C. § 1203.

104. Plaintiffs have no adequate remedy at law.

COUNT FOUR

(REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION IN NGW)

105. Plaintiffs repeat and reallege the allegations of Paragraphs 1–104 as though fully set forth herein.

106. Plaintiffs were and are the exclusive holders of all right, title and interest in and to the NGW Copyrighted Works, and the articles, as separate and distinct works contained therein, and are the owners of valid copyright registrations for the NGW Copyrighted Works.

107. Each entire publication, and the articles contained therein, of the NGW Copyrighted Works are highly original and contain creative expression and independent analysis.

108. Upon information and belief, Defendant engaged in one or more acts of intentionally removing or altering Plaintiffs' copyright management information conveyed in connection with the NGW Copyrighted Works in violation of 17 U.S.C. § 1202(b).

109. Upon information and belief, Defendant intentionally removed or altered Plaintiffs' copyright management information conveyed in connection with Plaintiffs' NGW Copyrighted Works without the authority of Plaintiffs and knowing, or having reasonable grounds to know that such acts would induce, enable, facilitate, or conceal copyright infringement.

110. Upon information and belief, Defendant, without the authority of Plaintiffs, distributed unauthorized copies of the NGW Copyrighted Works knowing that Plaintiffs' copyright management information had been removed or altered without the authority of Plaintiffs and

knowing, or having reasonable grounds to know, that such acts would induce, enable, facilitate, or conceal copyright infringement.

111. Defendant's intentional violation of the integrity of Plaintiffs' copyright management information caused irreparable harm and damage to Plaintiffs, entitling Plaintiffs to recovery of damages for such acts pursuant to 17 U.S.C. § 1203.

112. Plaintiffs have no adequate remedy at law.

JURY DEMAND

Plaintiffs hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant on the foregoing claim as follows:

- (1) That Defendant, its directors, officers, agents, subsidiaries, and affiliates, and all persons acting by, through, or in concert with any of them, be permanently enjoined from infringing any copyrights of Plaintiffs in any manner, and from copying, exhibiting, transmitting, displaying, distributing, or preparing derivative works from any of the copyrighted material in any past, present, or future issue of OD or NGW, including the OD and NGW Copyrighted Works and the articles contained therein;
- (2) That Defendant be required to pay to Plaintiffs such actual damages as it has sustained and/or statutory damages as a result of Defendant's copyright infringement pursuant to 17 U.S.C. § 504, which should be increased due to Defendant's willful infringement pursuant to 17 U.S.C. § 504(c)(2);
- (3) That Defendant be required to account for and disgorge to Plaintiffs all gains, profits, and advantages derived from its copyright infringement pursuant to 17 U.S.C. § 504;

- (4) That Defendant be required to pay to Plaintiffs such actual damages as they have sustained as a result of Defendant's removal or alteration of copyright management information pursuant to 17 U.S.C. 1203(c)(2) and/or statutory damages pursuant to 17 U.S.C. § 1203(c)(3);
- (5) That the Court issue an Order requiring Defendant to hold harmless and indemnify Plaintiffs from any claim(s) raised by any third party who allegedly relied on any of Plaintiffs' publications it received as a result of Defendant's unauthorized use of the Plaintiffs' copyrighted materials;
- (6) That the Court enter judgment against Defendant in favor of Plaintiffs' claims, including pre-judgment and post-judgment interest, as allowed by law;
- (7) That the Court enter judgment against Defendant finding that its unlawful copying, transmitting, and distributing of the OD and NGW Copyrighted Works and the articles contained therein was willful;
- (8) That Defendant be ordered to pay to Plaintiffs its costs in this action along with reasonable attorneys' fees pursuant to 17 U.S.C. § 505; and
- (9) That Plaintiffs be granted such other, further, and different relief as the Court deems just and proper.

Respectfully submitted,

POWLEY & GIBSON, P.C.

Dated: June 10, 2019

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